

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

COMMONWEALTH OF
PENNSYLVANIA, PENNSYLVANIA
GAME COMMISSION,

Plaintiff,

v.

THOMAS E. PROCTOR HEIRS
TRUST and the MARGARET
PROCTOR TRUST,

Defendants.

CASE NO. 1:12-CV-1567

Hon. Christopher C. Conner
United States District Judge

Hon. Susan E. Schwab
United States Magistrate Judge

**DEFENDANTS' UNCONTESTED MOTION FOR LEAVE TO FILE
AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO THE
SECOND AMENDED COMPLAINT WITH COUNTERCLAIMS**

Defendants Charles Rice Kendall and Ann P. Hochberg, Trustees of the Thomas E. Proctor Heirs Trust, and Bank of America, N.A. and John J. Slocum, Jr., Trustees of the Margaret O.F. Proctor Trust (collectively the "Proctor Trusts"), file the within motion for leave to file amended answers, affirmative defenses and counterclaims to the Second Amended Complaint of Commonwealth of Pennsylvania, Pennsylvania Game Commission ("Game Commission") and state as follows:

1. On August 10, 2012, the Game Commission filed the above captioned case against the Thomas E. Proctor Heirs Trust ("PHT") (ECF No. 1).

2. On November 30, 2012, the PHT filed a motion to dismiss the Complaint (ECF No. 6).
3. On July 18, 2013, the Game Commission filed an Amended Complaint (ECF No. 12).
4. On August 1, 2013, the PHT filed a motion to dismiss the Amended Complaint (ECF No. 14).
5. On August 7, 2014, the PHT answered the Amended Complaint (ECF No. 30).
6. On December 24, 2014, the Game Commission filed its Second Amended Complaint, naming for the first time, the Margaret O.F. Proctor Trust (“MPT”) (ECF No. 40).
7. On December 11, 2014, the PHT answered the Second Amended Complaint (ECF No. 38).
8. On January 30, 2015, the MPT answered the Second Amended Complaint (ECF No. 43).
9. On March 25, 2015, upon the parties’ joint motion, the Court stayed the proceedings pending the Pennsylvania Supreme Court’s resolution of the appeal in *Herder Springs Hunting Club v. Harry Keller, et al.* (ECF No. 47).

10. After resolution of the appeal in *Herder Springs*, the parties filed a joint status report to the Court (ECF No. 58) and an amended joint case management plan (ECF No. 61).

11. In the interim, the PHT has retained the same counsel as the MPT to represent it in this matter.

12. While conferring with counsel for the Game Commission in connection with preparing the joint case management plan, counsel for the Proctor Trusts expressed its intent to file an amended answer on behalf of both the PHT and MPT in light of the decision in *Herder Spring*. In addition, counsel for the Proctor Trusts expressed its intent to add counterclaims against the Game Commission to clarify and resolve all known disputes between the parties efficiently in a single proceeding.

13. Counsel for the Game Commission did not object to the Proctor Trusts' request to amend to file a joint answer and counterclaims.

14. The agreement of the parties is reflected in the joint case management plan.

15. Accordingly, the Proctor Trusts seek leave to amend their answer to the Second Amended Complaint.

16. The Proctor Trusts' proposed Amended Answer and Affirmative Defenses to the Second Amended Complaint with Counterclaims is attached hereto as Exhibit A.

WHEREFORE, the Proctor Trusts respectfully request that the Court permit them file their Amended Answer and Affirmative Defenses to the Second Amended Complaint with Counterclaims.

Dated: November 22, 2016

Respectfully submitted,

/s/ Laura A. Lange
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CERTIFICATE OF CONCURRENCE

The undersigned, Laura A. Lange, hereby certifies that she has contacted counsel for Plaintiff regarding the instant Motion for Leave to File Amended Answer and Affirmative Defenses to the Second Amended Complaint with Counterclaims. Counsel for Plaintiff has concurred with the Motion.

November 22, 2016

Respectfully submitted,

/s/ Laura A. Lange

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served upon the following via the Court's CM/ECF system, this 22nd day of November 2016:

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/s/ Laura A. Lange